

REMARKS/ARGUMENTS

Claims 12-15 and 22-31 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Alferness. Applicant has cancelled the pending claims and has added new claims 32-50. The Applicant has added new claims to more distinctly reflect the key differences between the present invention and Alferness. The Applicants respectfully maintain that the most recent Office Action, as with the previous Office Actions, does not establish a *prima facie* case of obviousness in rejecting these claims since Alferness does not teach or suggest each claimed limitation.

More specifically, Alferness does not teach or suggest “[a]pplying a [Control Program] to a Collection [of Media Files] that include[es] one or more conditional requirements associated with the playback of each Media File in the Collection” nor does it teach or suggest “[r]estricting playback of at least one Media File until one or more of the conditional requirements associated with such Media File in the Control Program have been met.”

Rather, Alferness discloses storing individual "sound elements" such as vocals, guitar, bass, drums, etc. (Col. 2, lines 55-58) These elements are mixed according to the controlling script when a selected song is played back. (Col. 3, lines 34-46, col. 6, lines 13-34, col. 6, line 61 - col. 7, line 7) Indeed, nearly EVERY music editing program uses such a “scripting” system to enable dynamic playback of one or more audio tracks in order to compose a song for playback. Indeed, this is the very essence of music production. Alferness, in other words, teaches storing individual sound elements of a song in each track, but not using a Control Program to restrict or limit playback of a song based on the presence or absence of one or more conditional requirements.

While applicant can appreciate that the script of Alferness and control tracks of the present invention appear to perform a similar function, they are actually doing it in a very different way, at different times with very different results. In the world of television, for example, Alferness would be the equivalent of a director of a show. By deciding which actors are

on stage, what they say and how that combination is created, the director effectively decides how to create a single show or episode much like Alferness produces a single song. Indeed, one could use the system claimed in Alferness to create the multiplicity of “songs” that are employed by the present invention and avoid requiring the artist to record more than one version of the song.

The present invention improves that by building a control mechanism around and between one or more of the completed songs that are stored in a Media File. Following from the previous analogy, if Alferness is the television director, the present invention provides a powerful tool for the network programming director—the person that decides which day of the week, time and order that the episodes will be viewable. In other words, the present invention gives producers and studios a tool to decide in which order a song would be played and under what conditions—including whether a song has been played and how many times it has been played (Para 40 lines 17-26).

Claims 33-49, which depend on claim 32, are also allowable for this reason as they incorporate the same unique limitations.

Claim 50 is also patentably distinct as Alferness fails to teach or disclose a system that includes “software program...capable of associating one or more conditional requirements to at least one Media File in the Collection” nor “a playback mechanism that is capable of interpreting the control track and restricting playback of at least one media file until such conditional requirements have been met.” Indeed, as explained above, Alferness seems distinctly focused on permitting playback of any number of music tracks by the user. As a result, the present invention is neither disclosed nor suggested by the prior art.

For at least these reasons, the Applicants maintain that the new claims are allowed and the final rejection should be withdrawn.

Respectfully submitted,

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